

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MIGUEL MADRIGAL PAZ,

Petitioner,

vs.

ELDON VAIL,

Respondent.

NO. CV-09-5042-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
ACTION WITHOUT PREJUDICE

BEFORE THE COURT are Petitioner's Objections (Ct. Rec. 6) to the Report and Recommendation to dismiss this habeas action. Petitioner, a prisoner at the Washington Correction Center, is proceeding *pro se* and has paid the filing fee; Respondent has not been served.

Mr. Paz asserts he is challenging the "execution of his sentence" as it relates to restitution and interest, and he should be permitted to raise such claims in a federal habeas action. He asserts he has been twice "punished" in violation of the provision against double jeopardy, and he seeks his release from "further punishment."

Again, Petitioner does not seek his release from incarceration. Petitioner appears to assert he cannot challenge the issue of interest in a state tort action, as it is "part of the judgment and sentence," and the Washington State Courts "refused to rule on the issues

1 presented." The court notes, Mr. Paz asserted in his habeas petition
2 that interest was being charged in violation of his judgment and
3 sentence, not as part of it. Regardless, a prisoner who believes his
4 prison account is being overcharged may file an internal prison
5 grievance procedure or a tort claim against the state. See RCW 4.92 et
6 seq. The fact a prisoner may be dissatisfied with these remedies,
7 does not render them inadequate.

8 Again, the purpose of a federal habeas petition under 28 U.S.C. §
9 2254 is to challenge the fact or duration of one's confinement, or to
10 seek a determination one is entitled to release or a shortening of
11 one's period of confinement. See *Preiser v. Rodriguez*, 411 U.S. 475,
12 487-90 (1973). Plaintiff's claims are not cognizable in this federal
13 habeas action. See *United States v. Kramer*, 195 F.3d 1129, 1130 (9th
14 Cir. 1999) (holding federal petitioners in custody cannot challenge
15 fines or restitution orders under § 2255, even if the petition also
16 contains cognizable claims for release from custody, denying a federal
17 defendant's motion to vacate a restitution order because "[b]y its
18 plain terms, § 2255 [like § 2254, despite certain textual
19 distinctions] is available only to defendants who are in custody and
20 claiming the right to be released").

21 Therefore, for the reasons set forth above and by the Magistrate
22 Judge, **IT IS ORDERED** the Report and Recommendation is **ADOPTED in its**
23 **entirety** and this federal habeas action is summarily **DISMISSED without**
24 **prejudice** under Rule 4, Rules Governing § 2254 Cases.

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28 ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING ACTION WITHOUT PREJUDICE -- 2

s/Lonny R. Suko

LONNY R. SUKO
CHIEF UNITED STATES DISTRICT JUDGE